IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12446 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIBEN MUNNAPRASAD KESHARI

Versus

LIC OF INDIA

Appearance:

MS LILU K BHAYA for Petitioner

MR DAXESH T DAVE for Respondent No. 1

MR SP SINGH for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/11/2001

ORAL JUDGEMENT

Rule. Mr.Daxesh Dave waives service of Rule on behalf of the respondent no.1 and Mr. S.P.Singh waives the service of Rule on behalf of respondent no.2.

1. The petitioner who is a widow aged about 24 years having two minor children aged about 3 and 5 years respectively has filed this petition under Article 226 of the Constitution of India for directing the respondent no.1 Corporation to make payment of the claim of the Policy to the petitioner as the legal heir of the deceased legally entitled to get the amount from the LIC Policy amount.

3. It is the case of the petitioner that the petitioner's husband Munnaprasad D. Keshari died on 21st July 1998. He was drowned in the river when he had gone for a religious bath. After the death of her husband, she has been thrown out of the house of her in-laws. She has now come to stay with her father at Ahmedabad. According to her, her father is in indigent circumstances to support his daughter and children. According to her, her husband had taken Life Insurance Policy bearing No. 832183052 for Rs.1 Lakh. It is the petitioner's case that she was informed by the respondent no.1 that the respondent no.1 was processing the claim. Ultimately, the petitioner was told that the payment cannot be given to the petitioner as the deceased had filed nomination in favour of Smt.Sonadevi D. Keshari, his mother and therefore, as and when the claim will be processed, the money will be given to her mother-in-law. The petitioner has challenged the same.

4. In fact the Corporation has, in its letter dated 1.12.1998 addressed to the petitioner at Annexure.B, made its stand clear by informing that the Corporation shall make the payment of the claim under the Policy in favour of the nominee, i.e. respondent no.2 on receipt of the requirements from her as valid nomination exists under the Policy in favour of the respondent no.2 as per Sec.39 of the Indian Insurance Act, 1938. The Corporation has also filed the affidavit-in-reply reiterating the said fact.

5. The Supreme Court in the case of Shri Vishin N. Khanchandani and anr. v. Vidya Lachmandas Khanchandani and anr., reported in JT (9) 2000 321 has explained Sec.39 of the Insurance Act while dealing with the case under Sec.6, 7 and 8 of the Government Savings Certificate Act, 1959 and has held that, though the language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the

amount of the National Savings Certificates, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi's case holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of Sub-section (2) of Section 8 of the Act.

6. In view of the above pronouncement of the Apex Court, it is clear that the respondent no.2 though entitled to payment of the amount, but the amount paid to her becomes the estate of the deceased. Such estate devolves upon all the persons who are entitled to succession under law, custom, or testament of the deceased holder. In other words, the respondent no.2 though held entitled to receive the amount due under the Policy, the amount in turn is payable to the legal heirs. The petition is, therefore, required to be allowed and is accordingly allowed. Rule is made absolute with no order as to costs.

7. With a view to see that the petitioner and her minor children are not to go to the respondent no.2 demanding their shares, in the interest of justice, the following directions are given which would serve the purpose:

(1) The respondent Corporation shall deposit the amount under the LIC Policy No. 832183052 of late Shri Munnaprasad D. Keshari together with interest in this Court within four weeks from today.

(2) On such amount being deposited, the office shall disburse one-fourth share of amount to respondent no.2 after proper verification.

(3) Similarly, the petitioner shall also be entitled to get her one-fourth share of the said amount which shall paid to her after proper verification.

(4) Regarding the balance amount share between the two minor children, the same shall be invested in any Nationalised Bank in the name of two minors by separate Fixed Deposits, initially for a period of five years to be renewed from time to time till they attain majority.

(5) It is made clear that the petitioner shall not be allowed to withdraw the said amount of minors for any other purpose nor will be entitled to create any loan on the said amount. However, the periodical interest accrued thereon shall be paid to the petitioner for the maintenance of the petitioner as well as her minor children.

(K.R. Vyas, J.)

Sreeram.